

June 2003

Update: Child Protective Proceedings Benchbook

Note: The court rules governing child protective proceedings have been amended extensively. See Michigan Supreme Court Orders 1998-50 and 2001-19, effective May 1, 2003. The *Child Protective Proceedings Benchbook* will be revised in the near future to include those court rule amendments and other changes that have occurred since the benchbook's publication. To view the court rule amendments, please go to <http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#approvedwww>.

CHAPTER 18

Hearings on Termination of Parental Rights

18.29 Termination on the Grounds of Failure to Rectify Conditions Following the Court's Assumption of Jurisdiction—§19b(3)(c)

Insert the following case summary as the first bulleted item on page 18-34:

: *In re JK*, ___ Mich ___ (2003)

The Michigan Supreme Court reversed the decision of the trial court to terminate the respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(ii) and 712A.19b(3)(g). The lower court terminated the mother's parental rights based upon the "other conditions" provision of MCL 712A.19b(3)(c)(ii). The "other condition" that the lower court relied upon was the lack of a bond or attachment between the mother and the child that arose after the child was placed in foster care. ___ Mich at ___. At the hearing on termination of parental rights, respondent-mother's therapist testified that mother and child had appropriately bonded and were attached. However, another therapist, who met with respondent-mother and child for less than one hour, testified that respondent-mother and child were not well-bonded or attached, but that this may have resulted from the child's placement in foster care. ___ Mich at ___. The Supreme Court reversed the lower court's finding and stated the following:

“In concluding that the respondent and her child were not properly bonded, the trial court ignored the fact that, immediately after the agency filed the petition for termination of parental rights, visitation was automatically suspended for several months pursuant to MCL 712A.19b(4). The counselor was then notified only two months before trial to address the bonding and attachment issue with the respondent. Any suggestion that the respondent was given ‘a reasonable opportunity’ to rectify the alleged bonding and attachment issue is unwarranted. . . .

“The fundamental right of a parent and child to maintain the family relationship can be overcome only by clear and convincing evidence, which, in this case, was not supplied by this single witness who observed the mother and child together for just one hour at a time when she had been addressing the bonding and attachment issue in therapy for less than one month.” ____ Mich at _____. [Footnote omitted.]

*See Section
18.33.

The Supreme Court also held that the petitioner failed to present clear and convincing evidence for termination of parental rights under MCL 712A.19b(3)(g).

CHAPTER 18

Hearings on Termination of Parental Rights

18.33 Termination on the Grounds of Failure to Provide Proper Care or Custody—§19b(3)(g)

Insert the following as the first bulleted item in the subsection “Case Law” on page 18-38:

: *In re JK*, ___ Mich ___ (2003)

Where the respondent-mother fulfilled every requirement of the parent-agency agreement, termination of her parental rights pursuant to MCL 712A.19b(3)(g) was improper. The Michigan Supreme Court reversed the lower court’s order terminating the respondent-mother’s parental rights and provided the following:

“The respondent in this case fulfilled every requirement of the parent-agency agreement. Her compliance negated any statutory basis for termination.

“This Court has held that a parent’s failure to comply with the parent-agency agreement is evidence of a parent’s failure to provide proper care and custody for the child. [*In re Trejo Minors*, 462 Mich 341, 360–363 (2000)]. By the same token, the parent’s *compliance* with the parent-agency agreement is evidence of her ability to provide proper care and custody.”²⁰

²⁰ If the agency has drafted an agreement with terms so vague that the parent remains ‘unfit,’ even on successful completion, then the agreement’s inadequacies are properly attributable to the agency and cannot form the basis for the termination of parental rights. Even if, in some case, it can be conceived that satisfaction by the parent of the parent-agency agreement does not render the parent ‘fit,’ in this case we are satisfied that the respondent’s satisfaction of the agreement did evidence that she was no longer an ‘unfit’ parent.” ___ Mich at ___.
